INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statute and contract provisions involved	3
Statement	3
Argument	9
Conclusion	20
Appendix	21

CITATIONS

Cases:

Aktieselakabet Cuzco v. *The Sucarseco*, 294 U. S. 394	20
American Stevedores v. *Porello*, 153 F. 2d 605, 330 U. S. 446	10, 17
Anderson v. *Lorentzen*, 160 F. 2d 173	13
Barbara v. *S. Ransom, Inc.*, 79 N. Y. S. 2d 438	18
Bohn v. *Americon Export Lines*, 42 F. Supp. 228	18
Burris v. *American Chicle Co.*, 120 F. 2d 218	19
Chattahoochee, The, 173 U. S. 540	20
Christon v. *United States*, 1948 A.M.C. 953	18
Coal Operators Casualty Co. v. *United States*, 76 F. Supp. 681	18
De Larrinaga, Esperanza, The, 248 Fed. 489	16
Dunn v. *Uvalde Asphalt Paving Co.*, 175 N. Y. 214	13
Employers' Liability Assur. Corp. v. *Monahan*, 91 F. 2d 130	19
Erie R. R. Co. v. *Erie Transportation Co.*, 204 U. S. 220	20
Fodera v. *Booth American Shipping Corp.*, 159 F. 2d 795	13
Geo. A. Fuller Co. v. *Otis Elevator Co.*, 245 U. S. 489	13, 14
Green v. *War Shipping Administration*, 66 F. Supp. 393	18
Hunt v. *Bank Line*, 35 F. 2d 136	19
Johnson v. *United States*, 79 F. Supp. 448	18
Lawson v. *Suwanee S. S. Co.*, 336 U. S. 198	19
Maru, Aden, The, 51 F. 2d 599	16
Ove Tysko v. *Royal Mail Steam Packet Co.*, 81 F. 2d 960	11
Portel v. *United States*, 1949 A.M.C. 487	18
Rederii v. *Jarka Corp.*, 26 F. Supp. 304, appeal dismissed, 110 F. 2d 234	18
Rich v. *United States*, decided November 7, 1949 (C. A. 2)	18, 19
Seaboard Stevedoring Corp. v. *Sagadahoc S. S. Co.*, 32 F. 2d 886	11, 12, 14
Seas Shipping Co. v. *Sieracki*, 328 U. S. 85	11, 13
Severn v. *United States*, 69 F. Supp. 21	18
S. S. Samovar, The, 72 F. Supp. 574	18
Standard Oil Co. v. *Robins Dry Dock & Repair Co.*, 32 F. 2d 182	14

Cases—Continued

	Page
Standard Wholesale P. & A. Works v. *Rukert*, 1949 A.M.C. 818	18
Tampico, The, 45 F. Supp. 174	18
United States v. *Wallace*, 18 F. 2d 20	16
Washington Gas Light Co. v. *District of Columbia*, 161 U. S. 316	14
Westchester Lighting Co. v. *Westchester Small Estates Corp.*, 278 N. Y. 175	19

Statutes:

Harter Act, 27 Stat. 445, 46 U.S.C. 192	19
Longshoremen's and Harbor Workers' Compensation Act, 44 Stat. 1424, 1426, 33 U.S.C. 905, Sec. 5	3, 10, 17
Public Vessels Act (46 U.S.C. 781)	7
Suits in Admiralty Act (46 U. S. C. 742)	7

Miscellaneous:

Admiralty Rule 56	7, 22
Leeming, Joseph, *Modern Ship Stowage* (U. S. Department of Commerce, Industrial Series—No. 1), p. 33	15

In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 441

ARROW STEVEDORING COMPANY, PETITIONER

v.

UNITED STATES OF AMERICA

No. 442

ARROW STEVEDORING COMPANY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The findings of fact and conclusions of law of the United States District Court for the Northern

District of California, Southern Division (Wms. R. 36; Mchl. R. 23),[1] are not reported in either case. The opinions of the United States Court of Appeals (Wms. R. 317; Mchl. R. 115) are reported at 175 F. 2d 329 (for the Williams case) and at 175 F. 2d 333 (for the Mitchell case).

JURISDICTION

The judgments of the Court of Appeals were entered on June 21, 1949 (Wms. R. 327-328; Mchl. R. 120-121). Petitions for rehearing were denied in orders entered on August 8, 1949 (Wms. R. 328; Mchl. R. 121-122). The petition for writs of certiorari was filed on October 31, 1949. The basis for this Court's jurisdiction appears in 28 U. S. C. 1254(1).

QUESTIONS PRESENTED

1. Whether the court below erred in finding that the injuries in these cases were caused by an unseaworthy condition created by petitioner's negligence.

2. Whether respondent—which was the shipowner and therefore liable to the longshoremen for breach of its non-delegable duty to provide a seaworthy ship on which to work even though the un-

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[1] As in the petition for certiorari, references here to the record in the case in which the injured longshoreman Williams was libellant will be designated "Wms. R."; references to the record in the case involving the deceased longshoreman Mitchell will be designated "Mchl. R."

The evidence received at the earlier Williams trial was, by stipulation, considered as part of the Mitchell case (Mchl. R. 116).

seaworthiness was caused by petitioner's negligence—is precluded from realizing its right to be indemnified by petitioner,

a. by the stevedoring contract provision respecting liability for loss or damage "resulting from default of ships or other gear supplied by the Government," or

b. by Section 5 of the Longshoremen's and Harbor Workers' Compensation Act.

STATUTE AND CONTRACT PROVISIONS INVOLVED

Section 5 of the Longshoremen's and Harbor Workers' Compensation Act appears, in pertinent part, in the Argument, *infra,* p. 17. Pertinent portions of the stevedoring contract between petitioner and respondent appear in the Appendix, *infra,* pp. 21-22.

STATEMENT

These cases involve the injury of one longshoreman and the death of another, both employees of petitioner, caused when an improperly secured hatch cover fell upon them while they were preparing to unload cargo from the naval transport U.S.S. *Edgecombe.* Both lower courts have found that the insecurely opened hatch cover made unsafe the hatch compartment in which the longshoremen were working and that the United States as shipowner was therefore liable for breach of its non-delegable duty to provide a safe place to work. The Court of Appeals, finding from the

record that the unsafe condition leading to the accident was proximately caused by petitioner's negligence, has held the United States entitled to exercise its contractual right of recovery over from petitioner, reversing the district court's decree on this point. Of this last holding petitioner seeks review in this Court. The facts, substantially undisputed here, are as follows:

The lower level of the *Edgecombe's* No. 4 hatch was divided into a port and starboard compartment. Each of these compartments was covered by a rectangular steel cover, hinged along the inboard side. Thus hinged, the doors were designed to be opened by raising them and swinging them inboard. When opened, the port cover would stand perpendicular to the deck of the ship. (Wms. R. 79-81, 37; Mchl. R. 68-69, 24).

The port cover, the fall of which resulted in the injuries in these cases, measured about eight feet athwartship and fourteen feet fore and aft and weighed about 3500 pounds (Wms. R. 37, 38; Mchl. R. 24, 25). This cover when open was supposed to be held in place by two dogs or pawls placed over and gripping its upturned edge. One of these dogs was attached to the forward, the other to the after, bulkhead of the hatch. Both swung on a shaft extending in a fore and aft direction from the bulkhead. When the dogs were placed over the edge of the hatch cover, they were supposed to be locked securely in place by a metal pin inserted

through a hole in each dog into a corresponding hole in the bulkhead. These locking pins were supposed to be attached to the bulkhead by means of chains near the dogs. (Wms. R. 38-39; Mchl. R. 25-26).

At about 2:00 A.M. on May 28, 1945, the date of the accident, petitioner's longshoremen, working under a night-shift supervisor named Bowers, opened the port hatch cover which has just been described (Wms. R. 285, 287, 301; Mchl. R. 46, 63, 90, 91, 94). They found that the pin for locking the forward dog was bent and were unable to put it in place. The pin for the after dog, Bowers testified, was missing (Wms. R. 296, 302-303; Mchl. R. 49, 70-71). The district court later found, in addition, that the after dog was defective in that it did not extend far enough to grip the upturned edge of the hatch cover (Wms. R. 39; Mchl. R. 26). Being unable, then, to lock the dogs properly, the longshoremen, in the language of one of those who performed the task, "just slapped them on" (Mchl. R. 95).[2] However, having opened the cover in this fashion, the night supervisor, Bowers, decided that the compartment beneath it was unsafe, and none of the men on his shift were permitted to work in it (Wms. R. 288, 289, 296, 297; Mchl. R. 53, 56, 76).

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[2] A non-commissioned officer of the *Edgecombe's* Navy crew testified (Wms. R. 229) that there were turnbuckles and rigging at hand with which to lash the port cover to the starboard cover when both were open as a safety device. Bowers testified, however (Mchl. R. 71), that his men had no access to material for so lashing the covers.

Bowers notified a Navy lieutenant (apparently the officer of the deck) of the unsafe condition, stating that the work of unloading the port compartment could not proceed until the condition was remedied (Mchl. R. 54-55, 59). The lieutenant said that, his men being unavailable then, he would attend to the situation at some time during the day shift (Wms. R. 304; Mchl. R. 59).[3]

At the conclusion of the night shift, at 6:00 A.M., although no unloading had been done from the port compartment, its cover was left in the insecurely open position in which Bowers' men had placed it (Wms. R. 286). Bowers stayed aboard the ship until 7:00 A.M. when the day shift reported for work, waiting to discharge his duty to report to petitioner's day supervisor, O'Shea, on the condition of the work (Wms. R. 287; Mchl. R. 47). At the Williams trial Bowers did not recall having discussed the condition of the hatches (Wms. R. 293); at the Mitchell trial he testified that he had told O'Shea of the unsafe condition of the pins for the port cover (Mchl. R. 55-56).

O'Shea denied that Bowers had mentioned the pins to him, and testified that, seeing the port cover open, he assumed it was safe to work in the compartment (Mchl. R. 98-99). He did not undertake to inspect the cover, he said, because it was well

[3] In the *Williams* case, Bowers testified that he had not mentioned the defective pins and dogs to the naval officer, but had spoken only of rigging the cover (see fn. 2, *supra*) (Wms. R. 293; 323-4). In the *Mitchell* case, he testified that he had also mentioned the pins (Mchl. R. 55, 59; cf. 119).

known that those who opened such covers were responsible for seeing that they were secure (Mchl. R. 99, 102).

Immediately after their arrival at 7:00 A.M., six of the longshoremen on the day shift, including Williams and Mitchell, entered the port compartment to begin unloading. While they stood on the cargo in the compartment, a cargo board was lowered through the hatch by means of a winch and boom. Neither the board nor the cable or falls struck the hatch cover during the descent. But before the work had proceeded any further, at about five or ten minutes after 7:00 A.M., the unlocked forward dog slipped and the hatch cover fell, injuring Williams and Mitchell, the latter fatally (Wms. R. 37-38; Mchl. R. 24-25).

Williams, and Mitchell's administrator, each filed a libel against the United States as shipowner—the former under the Public Vessels Act (46 U.S.C. 781), the latter under both the Public Vessels Act and Suits in Admiralty Act (46 U. S. C. 742) (Wms. R. 2-11; Mchl. R. 2-8). The United States impleaded Arrow, petitioner here, under Admiralty Rule 56 (Wms. R. 18-29; Mchl. R. 13-16).[4] On the trial the district court held that the United States was liable for the injuries to the longshoremen, both for the defective locking devices and for the negligently insecure fashion in which the cover had been left open (Wms. R. 48-49; Mchl. R. 33-34). Find-

[4] Admiralty Rule 56 is set forth in the Appendix, *infra*, pp. 22-23.

ing, however, that it was the Navy crew which had negligently opened and failed to fasten the hatch cover, and that the longshoremen were not guilty of any negligence in this regard, the district court exonerated Arrow from any liability over to the United States (Wms. R. 40, 42, 45-46, 49; Mchl. R. 28-29, 30-31, 34).[5]

The Court of Appeals, noting that the United States as shipowner was under a non-delegable duty to provide the longshoremen with a safe place in which to work, agreed that the United States was liable to the longshoremen in these cases for breach of that duty (Wms. R. 318-319). The court rejected as clearly erroneous, however, the district court's finding that petitioner's employees had not known of the defects in the dogs and had not been negligent in their conduct in respect of the hatch cover (Wms. R. 319; Mchl. R. 117). From the evidence which has been reviewed above, the Court of Appeals concluded that petitioner's employees, in opening the hatch cover and knowingly leaving it in a dangerously insecure position, were proximately responsible for the injuries which followed (Wms. R. 324; Mchl. R. 119). The court went on to hold that the stevedoring contract unambiguously provided that the United States would be indemnified by petitioner for damages incurred through the latter's

[5] There is nothing in the record supporting the finding that the Navy crew opened and secured the hatch cover, and petitioner does not here contend that the finding is correct. See *infra*, pp. 10-11.

negligence, and that neither Section 5 of the Longshoremen's and Harbor Workers' Compensation Act nor the contract provision denying indemnity where the loss resulted from default of ship's or other gear supplied by the Government was a bar to the Government's recovery over in these cases. Accordingly, the district court's decrees were reversed with instructions to enter decrees against petitioner in the amount of the Government's liability to Williams and Mitchell (Wms. R. 324-327; Mchl. R. 120).

ARGUMENT

Petitioner, purporting to discover a dilemma in this case, urges (Pet. 14, 31, 32, 33-34) that either (1) petitioner's employees were negligent, in which event unseaworthiness was not a cause of the injuries, and accordingly the Government was not liable to the libellants and so cannot recover over from petitioner, or (2) unseaworthiness caused the injuries, in which event only the shipowner can be liable and the negligence of petitioner's employees affords no basis for its liability. The fallacy of petitioner's analysis is that the record demonstrates, and the court below has held, that the cause of the injuries was an unseaworthy condition created by the negligence of petitioner's employees. The liability which petitioner has accordingly sustained is startling neither in law nor in logic. Because petitioner's employees negligently created a dangerous situation for which the United States as shipowner

was liable, petitioner has been required to indemnify the United States for its resulting losses.

The record leaves no doubt of the negligence of petitioner's employees or of petitioner's contractual obligation to provide indemnity in such circumstances. Nor does petitioner's attempt to avoid this liability find any basis either in Section 5 of the Longshoremen's and Harbor Workers' Compensation Act or in the special stevedoring contract's exception for losses "resulting from default of ships or other gear supplied by the Government."[6] We submit, in short, that the petition for certiorari presents no question meriting review by this Court.

1. Petitioner does not contest here the finding below that its own employees were responsible for the fatally insecure fashion in which the port hatch cover was opened and permitted to remain until its fall. Indeed, it is impossible to find in the record any support for the district court's finding that this dangerous condition was created by the Navy crew. The testimony showed clearly and without contradiction that petitioner's night-shift employees opened the cover, that they knew after opening it of the danger of working beneath it, that they left it in this unsafe position. If the night-shift super-

[6] The stevedoring contract here involved was not the Government standard form "Warshipsteve" contract but, as was the case in *American Stevedores* v. *Porello*, 330 U.S. 446, was a special form which is not involved in litigation in any other case.

visor, Bowers, warned his day successor, O'Shea, of this dangerous condition, the latter's gross negligence is merely an additional factor pointing to petitioner's liability. If, as O'Shea testified, there was no such warning, the responsibility for creating and permitting the continuance of the cover's dangerous position and the failure to warn its men of it, remains with petitioner.

But, as the court below pointed out, the United States as shipowner could not escape liability on the ground that the danger to the injured longshoremen was created by the negligence of other longshoremen in petitioner's employ.[7] The duty to provide a safe place to work—in these circumstances, a seaworthy ship—is nondelegable and is owed by the shipowner to longshoremen as well as to the ship's crew. *Seas Shipping Co.* v. *Sieracki,* 328 U. S. 85. And petitioner, in the course of "distinguishing" *Seaboard Stevedoring Corp.* v. *Sagadahoc S.S. Co.,* 32 F. 2d 886 (C.A. 9) (Pet. 42-43), in effect concedes that the open hatch cover in this case constituted an unseaworthy condition for which the United States was liable. Petitioner readily agrees that the improperly placed hatch board through which a longshoreman fell in the

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[7] Unlike the situation in *Ove Tysko* v. *Royal Mail Steam Packet Co.,* 81 F. 2d 960 (C.A. 9), upon which petitioner unaccountably relies (Pet. 36-37), the dangerous condition in this case was unknown to the longshoremen who were injured. So far as their safety was concerned, the fact that the hatch cover had been left insecurely opened by their fellow employees was of no significance.

Sagadahoc case was an appropriate basis for recovery by the longshoreman against the shipowner on the ground of unseaworthiness. The distinction between that situation and the one here—an improperly opened hatch cover, poised and ready to fall upon those working beneath it—is impossible to perceive. In *Sagadahoc,* the shipowner recovered over against the stevedore for the negligence of the latter's employees in leaving the hatch cover in a dangerous position; here the basis for recovery by the United States against petitioner is substantially identical.[8]

Nor is there any substance in petitioner's attempt to distinguish the cases on the ground that, in *Sagadahoc,* the unsafe condition was caused by employees of a stevedore other than the one by whom the injured longshoreman was employed. Assuming that petitioner owed its own employees

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[8] Petitioner's agreement that the injury in *Sagadahoc* was properly attributed to unseaworthiness points up the groundlessness of petitioner's expressed fears (Pet. 37-39) that the decision below will lead to shipowners' liability for unseaworthiness whenever stevedores are negligent. The shipowner, like every employer, must provide a safe place to work—a duty which, in the special circumstances of maritime service, extends to longshoremen as well as to the shipowner's employees. When, through the negligence of a stevedore or of anyone else, the place of work becomes unsafe—unseaworthy—the shipowner is liable. But where the negligence of a stevedore or other third party injures a seaman or longshoreman without having created an unsafe place to work—for example, by dropping a tool or mishandling a winch—the shipowner is not liable. The result must depend, of course, upon the facts of each particular case. In this case, as petitioner's concession demonstrates, an unseaworthy condition plainly was created by the stevedore's negligence.

the duty of keeping their place of work safe (see *Seas Shipping Co.* v. *Sieracki, supra,* at 95), the similar duty of the United States as shipowner remained "non-delegable and persisted despite any concurrent duty on the part of the stevedoring company." *Anderson* v. *Lorentzen,* 160 F. 2d 173, 174 (C.A. 2); *Fodera* v. *Booth American Shipping Corp.,* 159 F. 2d 795, 796 (C.A. 2).

2. The special form of stevedoring contract here involved provided (*infra,* pp. 21-22) that petitioner should "be liable to the Government for any loss or damage which may be sustained by the Government as a result of the negligence or wrongful acts or omissions of the [petitioner's] officers, agents or employees * * *".[9] Accepting its liability to the longshoremen, the United States appealed from, and secured a reversal below of, the district court's determination that the dangerous condition causing the injuries was not the result of negligence on the part of petitioner's employees. This result, which petitioner describes as a "preposterous situation" (Pet. 31),[10] is thoroughly familiar to our

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[9] Even in the absence of such an express provision, there is an implied undertaking in every contract to perform services that the contractor will indemnify the person hiring him against liability due to the contractor's negligence. *Dunn* v. *Uvalde Asphalt Paving Co.,* 175 N.Y. 214, 217-218.

[10] Petitioner's characterization of the result below as "preposterous" is addressed to the fact that the United States did not appeal from the district court decrees in favor of the injured longshoremen. But there was no need to disturb the decrees in favor of the longshoremen in order to decide that petitioner was liable over to the United States. Cf. *Geo. A. Fuller Co.* v. *Otis Elevator Co.,* 245 U.S. 489. Petitioner's

law, and the two reasons petitioner advances for a different result in this case are without merit. Cf. *Geo. A. Fuller Co.* v. *Otis Elevator Co.*, 245 U. S. 489; *Washington Gas Light Co.* v. *District of Columbia*, 161 U. S. 316; *Seaboard Stevedoring Corp.* v. *Sagadahoc S.S. Co.*, 32 F. 2d 886 (C.A. 9); *Standard Oil Co.* v. *Robins Dry Dock & Repair Co.*, 32 F. 2d 182 (C.A. 2).[11]

a. Petitioner urges first (Pet. 46-50) that it is relieved from the obligation to indemnify the United States by the contract's exception for "loss or damage resulting from default of ships or other gear supplied by the Government." There are two complete answers to this argument: first, that petitioner has misconstrued the quoted language; second, that apart from this misconstruction, the ex-

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reliance on *res judicata* simply ignores the fact that the court below reversed so much of the district court's decree as held the United States, rather than petitioner, liable for the negligently insecure fashion in which the hatch cover was left open. Since the United States was liable to Williams and Mitchell in either event, it was unnecessary to attack the decrees in their favor, or to appeal therefrom.

[11] In *Standard Oil Co.* v. *Robins Dry Dock & Repair Co.*, *supra*, a shipowner had been held liable to a seaman injured when he fell from a defective gangplank. Holding that the shipowner could recover from the shipbuilder who had provided the defective gangplank, the court (per Judge Augustus Hand) declared that there was "no real distinction between the legal principles involved in this case and in Washington Gaslight Co. v. Dist. of Columbia [*supra*] * * * Geo. A. Fuller Co. v. Otis Elevator Co., [*supra*] and Petition of L. Boyer's Sons Co. (C.C.A.) 25 F. (2d) 602. In all three of those cases a third party had recovered against a person who was under a nondelegable duty to furnish a safe place to such third person, but in each case the primary and affirmative wrong was occasioned by the defendant against which indemnity was sought." (32 F. 2d at 183)

ception would be inapplicable in the circumstances of this case.

It seems clear upon examination that the words "default of ships or other gear" contained an error in punctuation and were not intended to deviate from the ordinary clauses found in similar contracts which read "default of *ship's* or other gear." Unless the word is read *ship's* or *ships'*, it would be necessary to conclude that the contract defined "ships" as a kind of "gear supplied by the Government", an obvious absurdity. Accordingly, when petitioner refers to a defective hatch cover as a "default of ship" (Pet. 50), it relies upon a drafting inadvertence which can only be so read (and therefore regarded as an exception to petitioner's agreement to indemnify) by reducing the clause to nonsense. And it is to be noted that petitioner does not attempt to suggest that a defective hatch cover is a default of "gear" within the meaning of the contract; for the technical expression "ship's gear", in connection with the stevedoring of vessels, is well known, and understood to refer to cargo-handling gear supplied by the ship, not to parts of a ship such as the hatch covers.[12]

Assuming, however, that a defective hatch cover

[12] Thus, the standard work of Joseph Leeming, *Modern Ship Stowage* (U.S. Department of Commerce, Industrial Series—No. 1), states at p. 33: "The term "ship's gear" is used to describe the ship's deck winches, its cargo booms attached either to masts or kingposts, and the ropes or falls used in connection with the booms and winches for hoisting or lowering drafts of cargo."

comes within the indemnity exception, it is of no help to petitioner here. Petitioner was under a contractual duty to stevedore the vessel properly, a duty which included safeguarding against the kind of dangerous condition which caused the injuries in these cases. The record shows, and the court below found, that this duty was breached when petitioner's longshoremen negligently opened the hatch cover and left it open, knowing it was insecure. In these circumstances, the claim that the injuries were due to "default of ships or other gear" is without basis, even though the hatch cover itself was defective. The injuries were proximately due to the negligence of petitioner in failing to secure the hatch cover properly. And this is so even if we ignore the evidence and finding below (Wms. R. 229, 322) that there was rigging at hand with which the hatch cover could have been safely lashed. If there was nothing available to petitioner with which it could safely lash this hatch cover, petitioner's clear duty was to stay its operations, as its night supervisor had done, and to proceed only when the dangerous condition of the hatch cover had been remedied. Cf. *The Esperanza De Larrinaga,* 248 Fed. 489, 490 (C.A. 5); *United States* v. *Wallace,* 18 F. 2d 20, 21 (C.A. 5); *The Aden Maru,* 51 F. 2d 599, 601 (S.D. Tex.).

b. Petitioner contends, finally (Pet. 51-59), that its promise of indemnity is of no avail to the United States because Section 5 of the Longshoremen's

and Harbor Workers' Compensation Act makes the liability of an employer under the Act

> exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death * * *.

This contention would appear to have been disposed of by the decision in *American Stevedores* v. *Porello,* 330 U. S. 446. There this Court remanded to the district court a suit in which both the stevedore and the shipowner had been found to have contributed by their negligence to a longshoreman's injury. The question to be determined on remand was whether, in this situation, the stevedore's promise of indemnity meant full indemnity or partial indemnity, or whether the promise was inapplicable to a case of joint negligence, in which event, this Court pointed out, the district court would "be free to adjudge the responsibility of the parties to the contract under applicable rules of admiralty law" (330 U. S. at 458). The point of importance here is, of course, that this Court necessarily assumed in *Porello* that the shipowner's right of indemnity or contribution from the stevedore would be unaffected by the Longshoremen's Compensation Act. And this assumption was made in the face of the contrary position earlier announced by the lower

court in that case, which, although later retracted by the lower court on rehearing, is relied upon by petitioner (Pet. 53-55). See 153 F. 2d 605, 607, 609.

Apart from the decision in *Porello,* petitioner's argument has now been rejected by the Court of Appeals for the Second Circuit, *Rich* v. *United States,* decided November 7, 1949, and, with the exception of two decisions which are of no help to petitioner here,[13] by every lower court which has ruled upon it.[14] In addition, the New York Work-

[13] *Johnson* v. *United States,* 79 F. Supp. 448 (D. Ore.) (relied on at Pet. 17, 51-2); *Standard Wholesale P. & A. Works* v. *Rukert,* 1949 A.M.C. 818, 65 A. 2d 304 (Md. Ct. App.). The first of these decisions, unlike the cases at bar, involved no contract for indemnity. Insofar as this factor is not the significant distinction, the decision must be considered to have been overruled by the decisions of the court below. The *Rukert* case likewise contained no indemnity contract and the Maryland Court declared that "A different situation would be presented if the employer had undertaken, by agreement, to assume an obligation to indemnify apart from his legal obligation. * * * Immunity is obviously not of such a character that it cannot be waived." 1949 A.M.C. at 824. The court also stated that it regarded itself as "bound by authoritative construction placed upon [the Longshoreman's Act] by the federal courts." 1949 A.M.C. at 819. Since then, both the Court of Appeals for the Second Circuit and the court below have spoken. Because of these two factors —the court's distinction based on the absence of a contract which is present here, and its declared willingness to defer to federal decision—we do not believe the *Rukert* case poses the type of conflict requiring resolution by this Court.

[14] *Portel* v. *United States,* 1949 A.M.C. 487 (S.D.N.Y.); *Christon* v. *United States,* 1948 A.M.C. 953 (E.D. Pa.); *Coal Operators Casualty Co.* v. *United States,* 76 F. Supp. 681 (E.D. Pa.); *The S. S. Samovar,* 72 F. Supp. 574, 588 (N.D. Calif.); *Severn* v. *United States,* 69 F. Supp. 21 (S.D.N.Y.); *Green* v. *War Shipping Administration,* 66 F. Supp. 393 (E.D.N.Y.); *Bohn* v. *American Export Lines,* 42 F. Supp. 228 (S.D.N.Y.); *The Tampico,* 45 F. Supp. 174 (W.D.N.Y.); *Rederii* v. *Jarka Corp.,* 26 F. Supp. 304 (D. Me.), appeal dismissed, 110 F. 2d 234 (C.A. 1); *Barbara* v. *S. Ransom, Inc.,* 79 N.Y.S. 2d 438.

men's Compensation Law, from which the Longshoremen's Compensation Act was substantially copied,[15] has been similarly construed. *Westchester Lighting Co.* v. *Westchester Small Estates Corp.*, 278 N. Y. 175; *Burris* v. *American Chicle Co.*, 120 F. 2d 218 (C.A. 2). Given what amounts to a unanimous course of decision against petitioner's position and the clear groundlessness of that position, we believe that it does not merit review here.

That the position is groundless may be briefly demonstrated. The Longshoremen's Act makes the employer's liability exclusive so far as it concerns "the employee, his legal representative * * * and anyone otherwise entitled to recover damages from such employer * * * on account of such injury or death * * *." But the right to indemnity or contribution, whether contractual or implied in law, is an independent right, arising not from the injury or death, but from the losses the indemnitee or contributee has incurred therefor. *Rich* v. *United States, supra; Westchester Lighting Co.* v. *Westchester Small Estates Corp., supra.* Such rights are no more affected by the Act than would be an insurance contract in which the employer agreed to pay a stated sum upon the longshoreman's death or injury.

A precisely analogous situation exists under Section 3 of the Harter Act (27 Stat. 445, 46 U.S.C.

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[15] See *Lawson* v. *Suwanee S. S. Co.*, 336 U.S. 198, 205; *Employers' Liability Assur. Corp.* v. *Monahan*, 91 F. 2d 130, 132 (C.A. 1); *Hunt* v. *Bank Line*, 35 F. 2d 136 (C.A. 4).

192) which relieves the owner of a seaworthy vessel of liability for damage to or loss of cargo resulting from fault or errors in navigation or management. The decisions of this Court have long since settled that the Act does not relieve the cargo-carrying shipowner from the obligation to make contribution where his vessel and another share the fault for a collision damaging cargo. *The Chattahoochee,* 173 U .S. 540, 554, 555; *Aktieselskabet Cuzco* v. *The Sucarseco,* 294 U. S. 394, 400-401; *Erie R. R. Co.* v. *Erie Transportation Co.,* 204 U. S. 220, 226-227.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the petition for a writ of certiorari should be denied.

PHILIP B. PERLMAN,
Solicitor General.
H. G. MORISON,
Assistant Attorney General.
PAUL A. SWEENEY,
MARVIN E. FRANKEL,
Attorneys.

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APPENDIX

1. The stevedoring contract contained the following provisions pertinent here (Wms. R. 265-266):

Article 6. Opening and Closing Vessel

Without cost to the Government, Contractor shall remove and replace wedges, hatch bars, tarpaulins, hatches and beams with respect to all decks, both during loading or discharging operations and to make the hatches ready for sea. Stevedoring contractors are required to cover all hatches at their own expense if not working at night.

* * * * * * *

Article 26. Liability and Indemnity

(a) The Contractor shall procure and maintain at all times during the continuance of this agreement a policy or policies of insurance with underwriters to be approved by the contracting officer insuring the Contractor against liability for injury to or death of any person or persons to an amount not less than $250,000.00 in any one accident, and for property damage occasioned to any pier, car, lighter, vessel, cargo or other property to an amount not less than $25,000.00 in any one accident arising out of any operations performed hereunder.

(b) The Contractor shall be liable to the Government for any loss or damage which may be sustained by the Government as a result of the negligence or wrongful acts or omissions

of the Contractor's officers, agents or employees or through fault of its equipment or gear, subject, however, to the following limitations and conditions:

* * * * * * *

(2) The Contractor shall not be responsible to the United States for any loss or damage resulting from any act or omission of any employee of the Government, or resulting from compliance by officers, agents, or employees of the Contractor with specific directions of the Port Director, NTS, Twelfth Naval District, Nor shall the Contractor be so responsible for any such loss or damage resulting from default of ships or other gear supplied by the Government.

2. Admiralty Rule 56 provides:

Right To Bring In Party Jointly Liable

In any suit, whether in rem or in personam, the claimant or respondent (as the case may be) shall be entitled to bring in any other vessel or person (individual or corporation) who may be partly or wholly liable either to the libellant or to such claimant or respondent by way of remedy over, contribution or otherwise, growing out of the same matter. This shall be done by petition, on oath, presented before or at the time of answering the libel, or at any later time during the progress of the cause that the court may allow. Such petition shall contain suitable allegations showing such liability, and the particulars thereof, and that such other

vessel, or person ought to be proceeded against in the same suit for such damage, and shall pray that process be issued against such vessel or person to that end. Thereupon such process shall issue, and if duly served, such suit shall proceed as if such vessel or person had been originally proceeded against; the other parties in the suit shall answer the petition; the claimant of such vessel or such new party shall answer the libel; and such further proceedings shall be had and decree rendered by the court in the suit as to law and justice shall appertain. But every such petitioner shall, upon filing his petition, give a stipulation, with sufficient sureties, or an approved corporate surety, to pay the libellant and to any claimant or any new party brought in by virtue of such process, all such costs, damages, and expenses as shall be awarded against the petitioner by the court on the final decree, whether rendered in the original or appellate court; and any such claimant or new party shall give the same bonds or stipulations which are required in the like cases from parties brought in under process issued on the prayer of a libellant.

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